STATE OF MICHIGAN

COURT OF APPEALS

PHYLLIS ANN MANSOUR,

Plaintiff-Appellee,

v

ROSS PATRICK CUPPLES,

Defendant-Appellant.

UNPUBLISHED
June 1, 1999

No. 201773
Ingham Circuit Court
LC No. 94-084521 DO

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIAM.

An amended judgment of divorce was entered by the trial court on February 26, 1997, incorporating a binding mediation award that divided marital property. Defendant appeals as of right, and we affirm.

This action was originally filed as an action for separate maintenance in November 1994, with an amended complaint for divorce being filed in February 1995. During the subsequent two years, this case was assigned to several different judges. During this time, defendant also employed several different attorneys, and at times, proceeded in pro per. On November 6, 1996, the trial court, Judge Thomas L. Brown presiding, entered an order sua sponte sending the case to mediation on December 6, 1996 and appointing Duane Hildebrandt as the mediator. At a pretrial conference on November 26, 1996, defendant, who was in pro per at the time, objected to proceeding without counsel, and he claimed that he had been "railroaded into mediation". Defendant, however, did not object to the mediation itself and, in fact, stated that he would "like nothing better than to have this matter resolved through mediation." On December 5, 1996, the trial court entered an order bifurcating the case, granting plaintiff a divorce and reserving rulings on alimony, fault, property divisions and all other matters. The case thereafter never proceeded to mediation pursuant to the November 6, 1996 order because on December 6, 1996, the date set for mediation, defendant failed to attend, claiming that he was under emotional duress. On December 16, 1996, with his newly retained counsel, defendant agreed to binding mediation and stipulated to terms for the binding mediation. Counsel for both parties later agreed to use Hildebrandt as the mediator.

On January 16, 1997, the date scheduled for binding mediation, defendant faxed a letter to Hildebrandt's office, which stated that he could not attend the proceedings because a snow storm made it impossible for him to travel to the site of the mediation. His letter also indicated that his counsel was not authorized to proceed in his absence. Hildebrandt determined that defendant could have attended the proceedings, but chose not to do so. The mediation therefore proceeded without defendant and with his counsel in attendance, but merely observing the proceeding. On February 12, 1997, the binding mediation award was filed.

Plaintiff moved for entry of the property settlement pursuant to the binding mediation award and the hearing was scheduled for February 26, 1997. Defendant moved to set aside the December 5, 1996 judgment and moved to disqualify Judge Brown. The hearings on those motions were also set for February 26, 1997, along with a hearing on defendant's objections to the entry of the property settlement found in the binding mediation award. On February 26, 1997, Judge Brown refused to disqualify himself, stating that he had no "personal animosity" towards defendant. Defendant then took the matter before the Chief Judge of the Ingham Circuit Court, who also denied the motion to disqualify Judge Brown. Judge Brown then entered an amended judgment of divorce, incorporating the binding mediation award.

We are to uphold the factual findings of the circuit court in a divorce action unless we find that they are clearly erroneous. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). The dispositional ruling of the trial court however "should be affirmed unless the appellate court is left with the firm conviction that [it] was inequitable." *Id.*, citing *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

Defendant first argues that the trial court erred by sua sponte ordering the case to mediation on November 6, 1996. Because no mediation took place pursuant to the November 6, 1996 order, the issue of whether the order was proper does not provide the basis for any relief to defendant from the amended judgment or the binding mediation award. This Court does not render advisory opinions on issues unnecessary to the disposition of the case. *People v Wilcox*, 183 Mich App 616, 620; 456 NW2d 421 (1990). See also *People v Hart*, 129 Mich App 669, 674; 341 NW2d 864 (1983) and *People v Turner*, 123 Mich App 600, 603-604; 332 NW2d 626 (1983).

Defendant next argues that the initial December 5, 1996 judgment of divorce was invalid because it bifurcated the proceedings and did not include a determination of the property rights of the parties. Defendant is correct that the December 5, 1996 judgment was improper where it did not include a determination of the property rights of the parties. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601-602; 543 NW2d 62 (1995). However, in this case, the divorce judgment was amended and the terms of the property division were included in the amended judgment of divorce. Therefore, any deficiencies in the original judgment were cured. Defendant fails to cite to any authority to support his argument that because the original judgment of divorce was invalid, the amended judgment has no effect or should be vacated. We will not search for authority to support defendant's position, *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994), and we note that amending the judgment to correct its deficiencies was proper and the amended judgment superseded the erroneous prior judgment. See *Bender v Zoba*, 376 Mich 237, 239-240; 136 NW2d 19 (1965).

Defendant also argues that the December 16, 1996 stipulation should not be binding on him because it was "induced" by the improper order of November 6, 1996 and the void judgment of December 5, 1996, and was signed only under duress on the advice of his attorney, which advice prejudiced his rights. We disagree with this disingenuous argument, and note that defendant has completely failed to support his argument that the agreed upon stipulation should not have any force or effect. He also has failed to demonstrate that the stipulation was improperly secured by his attorney at the time.

Defendant next argues that the trial court improperly ordered mediation because discovery was not complete. MCR 3.216(B)(1)(a). Defendant fails to provide support for the claim that discovery was incomplete, and we note that a June 6, 1996 scheduling order indicated that the matter was ready for trial at that time. Thus, we find nothing in the record to support defendant's claim that discovery was incomplete at the time mediation was ordered and at the time the mediation hearing took place.

Defendant next argues that Hildebrandt was improperly chosen as the mediator in violation of MCR 3.216(E). We disagree. The parties, by and through their counsel, agreed to have Hildebrandt mediate the case, which is permissible under the court rule. Moreover, we note that defendant never moved to disqualify Hildebrandt and never challenged his selection as the mediator prior to the hearing.

Defendant next argues that binding mediation is the equivalent of binding arbitration. He argues that in accordance with *Frain v Frain*, 213 Mich App 509, 511-512; 540 NW2d 741 (1995) binding mediations are subject to all of the arbitration provisions set forth in MCR 3.602, specifically MCR 3.602(J)(1)(d), which provides that an arbitration award "shall" be vacated if "the arbitrator refused to postpone the hearing on a showing of sufficient cause. . . . " Defendant contends that he showed sufficient cause to postpone the January 16, 1997 hearing, that being the snow storm that impeded his travel, and thus the binding mediation award should be vacated.

Generally, when a party stipulates to an arrangement that limits the party's rights to less that that which is otherwise required, that party may not later complain on appeal about the restriction. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997). In this case, defendant agreed to binding mediation, the terms of which were specifically spelled out in the stipulation and order for binding mediation and which included that the award could only be vacated if it was procured by corruption, fraud or other undue means; misconduct by the mediator materially prejudicing a parties rights; or if the mediator exceed the authority or powers granted by the mediation agreement and the mediation rule, MCR 3.216. These provisions closely mirror those found in the arbitration rule, MCR 3.602(J)(1)(a), (b) and (c). A provision similar to MCR 3.602(J)(1)(d), which lists refusal to postpone a hearing on a showing of sufficient cause as grounds to vacate an *arbitration* award was not, however, included Instead, we note that MCR 3.216(G)(3), which was incorporated into the agreement, required defendant to attend unless the mediator excused him from the proceedings for good cause shown, which did not happen in this case. We need not reach the issue of whether all binding divorce mediations must conform to and include all of the arbitration provisions from MCR 3.602, specifically (J)(1)(d), or whether the terms as limited by the stipulation of the parties control.[1] The reason is that our review of the record reveals that the trial court was aware of and considered defendant's claim that he was precluded from attending the mediation because of severe weather.[2] The trial court implicitly

determined that sufficient cause was not shown for defendant to obtain a postponement of the hearing because it entered the amended judgment in spite of defendant's claim. Thus, whether the trial court technically applied MCR 3.602(J)(1)(d) or not, it rendered a decision that the mediator properly found that the hearing should not be postponed. We review the trial court's refusal to vacate an award for clear error, *Dohanyos v Detrex Corp*, 217 Mich App 171, 177; 550 NW2d 608 (1996), and find none. Because the mediator appropriately found that good or proper cause had not been shown to postpone the hearing, no court rules were violated when the mediation proceeded without defendant being in attendance.

We also note that defendant argues that the trial court improperly failed to hear arguments on its motion to set aside the December 5, 1996 judgment and his objections to entry of the property settlement. The court was not required to hear oral argument. "A court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion." MCR 2.119(E)(3). Moreover, our review of the record indicates that Judge Brown was fully aware of all of the issues before him and the arguments of the parties when he entered the amended judgment.

Finally, defendant's various complaints that the procedures set forth in MCR 3.216(G)(5), (7), (8) and (I) where not complied with have no merit because this was not an ordinary domestic relations mediation pursuant to MCR 3.216, but was a binding mediation where the parties agreed to be bound and did not utilize mediation in an attempt to reach a settlement. See *Frain, supra* at 511.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ Harold Hood

[1] We note that defendant did not raise the issue of whether MCR 3.602(J)(1)(d) should have been read into the binding mediation agreement. An issue not raised before the trial court is not generally preserved for our review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

[2] Defendant's brief in opposition to plaintiff's motion for entry of the property settlement discusses, in depth, defendant's claim that the weather precluded him from attending the binding mediation.